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**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE**

ALASKANS FOR BETTER
ELECTIONS,

Plaintiff,

v.

KEVIN MEYER, LIEUTENANT
GOVERNOR OF THE STATE OF
ALASKA and the STATE OF ALASKA,
DIVISION OF ELECTIONS,

Defendants.

COPY

Original Received

OCT 28 2015

Clerk of the Trial Court

Case No. 3AN-19-09704 CI

DEFENDANTS' MOTION FOR STAY PENDING APPEAL

The State moves for a stay of this Court's order pending the outcome of the State's appeal to the Alaska Supreme Court. That Court should have the opportunity to definitively resolve the constitutionality of 19AKBE before it is put before voters for their signatures. And that Court—which has the power to overrule the outdated decisions that this Court considered binding—is likely to agree with the State that voters deserve an effective single-subject rule that will empower them to vote on the three distinct proposals in 19AKBE separately.

I. ARGUMENT

A. To obtain a stay pending appeal, the State must make a clear showing of probable success on the merits.

A non-monetary judgment is subject to stay at the discretion of the superior court, whose determination is guided by the “public interest.”¹ When considering whether granting a stay is in the public interest, the Court must consider criteria similar to the criteria for a preliminary injunction.² The applicable standard varies depending on the harms faced by the parties.³ If the moving party faces “irreparable harm” and the opposing party is adequately protected from harm, the Court applies a “balance of hardships” approach in which the moving party “must raise ‘serious’ and substantial questions going to the merits of the case; that is, the issues raised cannot be ‘frivolous or obviously without merit.’”⁴ If, however, the moving party does not face irreparable harm or the opposing party cannot be adequately protected, the Court requires the moving party to show a “clear showing of probable success on the merits.”⁵

In this case, the State acknowledges that the higher “probable success on the merits” standard applies because if this Court issues a stay pending appeal, the sponsors cannot be adequately protected from harm via, for example, a supersedeas bond. The

¹ *Keane v. Local Boundary Comm’n*, 893 P.2d 1239, 1249 (Alaska 1995).

² *See id.* (providing that “the test presented in *A.J. Industries, Inc. v. Alaska Public Service Commission*, 470 P.2d 537 (Alaska 1970)—a preliminary injunction case—“is still applicable” in the stay context).

³ *State, Div. of Elections v. Metcalfe*, 110 P.3d 976, 978 (Alaska 2005).

⁴ *Id.*

⁵ *Id.*

sponsors wish to collect voter signatures in an effort to get 19AKBE on the ballot in the next election. If the Court's decision is stayed, the sponsors will lose significant signature-gathering time and likely will have to await another election. A bond cannot remedy this harm after the fact. Thus, the State must make a "clear showing of probable success on the merits" to obtain a stay pending appeal.

B. The State is likely to succeed on the merits on appeal.

The State has already briefed its merits arguments to this Court and will not repeat them at length here. In short, 19AKBE violates the single-subject rule because it would present voters with a take-it-or-leave-it proposition encompassing three independent and unconnected legal reforms: (1) replacing the party primary system with an open nonpartisan primary; (2) establishing ranked-choice voting in the general election; and (3) adding new disclosure and disclaimer requirements to campaign finance law. A ballot initiative must encompass only one subject in order to "allow[] voters to express their will through their votes more precisely, prevent[] the adoption of policies through stealth or fraud, and prevent[] the passage of measures lacking popular support by means of log-rolling."⁶ The sponsors claim to champion voter voice and choice, but their initiative "does not provide the voters with an opportunity to express their approval or disapproval of each distinct proposal."⁷ Voters may have different opinions on the three proposals, but would be wrongly forced to choose all or none.

⁶ *Croft v. Parnell*, 236 P.3d 369, 372 (Alaska 2010).

⁷ *Id.*

This Court rejected these arguments, but the State is nonetheless likely to succeed on appeal because although this Court felt bound by certain precedents, the Alaska Supreme Court will not be so constrained. The State will argue on appeal that the Court should overrule the outdated case law, which the Court has expressed misgivings about for years. The Alaska Supreme Court is likely to agree with the State that voters deserve an effective single-subject rule that will empower them to vote on the three distinct proposals in 19AKBE separately. “[S]tare decisis is a practical, flexible command that balances our community’s competing interests in the stability of legal norms and the need to adapt those norms to society’s changing demands.”⁸ To the extent that outdated precedents would allow voters to be forced into an all-or-nothing choice to accept or reject 19AKBE’s package of distinct provisions, the Court should overrule those precedents because they are originally erroneous and unworkable in practice, and more good than harm would result from a departure from precedent.

Allowing multi-faceted initiatives on absurdly broad subjects like “land” or “elections” to reach the ballot does not further the single-subject rule’s goal of allowing voters to “express their will through their votes more precisely” and “to express their approval or disapproval of each distinct proposal.”⁹ Enforcing an effective single-subject rule and requiring the sponsors to submit their three major distinct reforms in three initiatives would create a small administrative hurdle in service of empowering Alaskan voters and protecting their ability to cast meaningful votes.

⁸ *Pratt & Whitney Canada, Inc. v. Sheehan*, 852 P.2d 1173, 1175 (Alaska 1993).

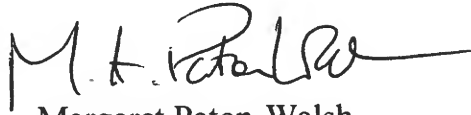
⁹ *Croft*, 236 P.3d at 373.

II. CONCLUSION

Because the State is likely to succeed on the merits before the Alaska Supreme Court, the Court should grant a stay pending appeal.

DATED October 28, 2019.

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CERTIFICATE OF SERVICE

I hereby certify, that on this date true and correct copies of the **Defendant's**
Motion for Stay Pending Appeal and this **Certificate of Service** were served via
U.S. Mail on the following:

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